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NONPARTISAN UNICAMERAL—BENEFITS, DEFECTS RE-EXAMINED

By William Riley*

I. INTRODUCTION

*The task of government is not to express an imaginary popular world, but to effect adjustments among the various special worlds and purposes which at any given time are pressing for realization.*¹

The Nebraska legislative form of government is twice unique. It is unique because it is a unicameral, and it is unique because it is the only truly nonpartisan legislature.² In fact, the Nebraska legislative system is probably the only fresh concept in state government to succeed during the twentieth century.³

Although the one-house legislature is well embedded in the Nebraska governmental structure the nonpartisan feature is under constant attack.⁴ The present legislative session has been no exception. LB 9, introduced in the current session, proposed a constitutional amendment to provide that the members of the legisla-

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1. I V. KEY, *POLITICS, PARTIES, AND PRESSURE GROUPS* 10 (3d ed. 1952).
2. NEB. CONST. art. III. Until recently nonpartisanship was also a feature of the Minnesota bicameral legislature. In 1973 the Minnesota Legislature amended the selection process to provide for partisan election of state legislators. No party membership was indicated on the ballots, yet, each chamber was organized into Liberal and Conservative caucuses. These operated in a manner similar to political parties in other legislatures, and often there were connections between these caucuses and the two major parties. Therefore, the Minnesota Legislature was organized in a manner similar to that of a partisan legislature even though the legislators were elected on a nonpartisan ballot. Hagan, *The Bicameral Principle in State Legislatures*, 11 J. PUB. L. 310, 316 (1962) [hereinafter cited as Hagan]. See also G. MITAU, *POLITICS IN MINNESOTA*, 82 (2d ed. 1970) [hereinafter cited as MITAU].
3. Swindler, *State Constitutions for the 20th Century*, 50 NEB. L. REV. 577, 589 (1971). Over two-thirds of the states have experimented with new or revised constitutions, but they have continually shied away from the nonpartisan unicameral. *Id.* at 577.
4. J. OLSON, *HISTORY OF NEBRASKA* 325-27 (2d ed. 1966) [hereinafter cited as OLSON]. With the primary impetus originating within the Republican and Democratic parties numerous initiative petitions have been drafted and circulated throughout the state in an attempt to place the partisan-nonpartisan question upon the ballot. These attempts have always failed. The same forces have intermittently tried the legislative route to place the constitutional change before the voters.

ture be elected in a partisan manner. The bill's proponents fell only one vote short of placing the amendment before the voters. Since the legislature and the people will undoubtedly be confronted with this issue again, it is the purpose of this article to draw together the threads of controversy which seem to entwine the nonpartisan concept so that future debate may be more meaningful.

Although the twin features of the Nebraska Legislature may be mutually independent⁵ they possess an almost inextricable history. Therefore, the development of the nonpartisan unicameral will be presented first before describing the current debate over the nonpartisan issue. Finally, a compilation and analysis of sundry arguments for and against the nonpartisan legislature will be considered in order to determine the justification and worth of the *nonpartisan* unicameral.

II. BACKGROUND

A. EARLY HISTORY

Minnesota and Nebraska developed their divergent strains of nonpartisanship⁶ as the result of different stimuli in history. Party

1939—L.B. 463, motion to lay over to general file defeated 9 for, 18 against, 16 not voting. 1939 NEB. LEG. J. 1215-16 (53d Leg. Sess.).

1951—L.B. 160, indefinitely postponed in committee. 1951 NEB. LEG. J. 641 (62d Leg. Sess.). Motion to lay over to general file defeated 15 for, 25 against, 3 not voting. *Id.* at 686-87.

1957—L.B. 11, indefinitely postponed in committee. 1957 NEB. LEG. J. 138 (68th Leg. Sess.). Motion to lay over to general file defeated 6 for, 31 against, 6 not voting. *Id.* at 612.

1963—L.B. 112, indefinitely postponed in committee 1963 NEB. LEG. J. 1206 (73d Leg. Sess.). Motion to lay over to general file defeated 8 for, 34 against, 1 not voting. *Id.* at 1285.

1967—L.B. 299, passed out of committee to general file. Indefinitely postponed 26 for, 14 against, 9 not voting. 1967 NEB. LEG. J. 1675 (77th Leg. Sess.).

1972—L.B. 1431, passed out of committee to general file. Indefinitely postponed 42 for, 0 against, 7 not voting on the last day of the session. 1972 NEB. LEG. J. 1753 (82d Leg., 2d Sess.).

1973—L.B. 9, motion to place on the ballot failed 28 for, 19 against, 2 not voting (the original vote was 29 to 18, however, Sen. Richard F. Proud of Omaha, the Speaker, switched sides to be in a parliamentary position to ask for reconsideration). 1973 NEB. LEG. J. 352 (83d Leg., 1st Sess.). Motion to reconsider failed 26 for, 16 against, 7 not voting. *Id.* at 485.

5. G. Saylor, *et. al.*, The Unicameral Legislature: Its Operation in Nebraska 36 (Neb. State Teachers' Ass'n: Teachers' Pamphlet No. 5, 1937, on file in U. of Neb.-Lincoln Love Library) [hereinafter cited as Saylor].

6. Note 2 *supra* and accompanying text.

designation was abandoned in Minnesota during the struggle between the "drys" and the "wets" in 1913.⁷ In Nebraska the nonpartisan issue was initially rejected by the electorate in 1924,⁸ but when nonpartisanship was linked with the unicameral proposal by George Norris in 1934⁹ the voters accepted the nonpartisan feature as an adjunct to the new governmental order.¹⁰ Nonpartisanship was so tightly welded to the unicameral theory by Senator Norris that both concepts must be discussed in conjunction with each other.

Nebraska was not a newcomer to the unicameralism-bicameralism controversy in 1934; it had been debated since 1913.¹¹ But

7. MITAU, *supra* note 2, at 80.

[O]pponents of prohibition working with liquor interests exploited sentiments within the legislature that were strongly critical of party machines and boss control. One must remember that this was the era of progressivism, when parties were disdained and political independence was extolled, and when it was hoped that direct political action by the people (through such means as the initiative, referendum, recall, and direct primary) would lead to more responsible government.

Id.

8. The direct primary and nonpartisan elections were submitted by popular initiative and defeated by a vote of 163,932 in favor and 228,485 against. NEBRASKA BLUE BOOK 119 (1970).
9. "Many felt that the proposal for non-partisan election would defeat the amendment but, at the insistence of Senator Norris, this feature was retained." Lancaster, *Nebraska's New Legislature*, 22 MINN. L. REV. 60, 61-62 (1937) [hereinafter cited as Lancaster]. See also OLSON, *supra* note 4, at 323. "The result of the vote however showed conclusively that all of those apprehensions were groundless." Senning, *The One-House Legislature in Nebraska*, 13 NEB. L. BULL. 341, 348 (1934) [hereinafter cited as Senning].
10. The nonpartisan unicameral was submitted by popular initiative and adopted by a vote of 286,086 in favor and 193,152 against. NEBRASKA BLUE BOOK 119 (1970).
11. Note, *Unicameralism and Bicameralism: History and Tradition*, 45 BOST. U. L. REV. 250, 265 (1965) [hereinafter cited as *Unicameralism*]. In 1913 John N. Norton introduced an amendment in the Nebraska Legislature to provide for a single chamber. A committee report favored the proposal, but the legislative body rejected the bill. A majority of the 1915 session favored the concept, however, there were not enough votes to submit the proposal to the electorate. The 1917 legislature rejected the whole idea. John Norton pressed again at the 1919-1920 Constitutional Convention for adoption of a one-house legislature, but his proposal was defeated upon a tie vote with the president of the convention voting against the innovation. An initiative petition failed in 1923, and amendments before the 1925 and 1933 legislative sessions were likewise doomed to defeat. See Orfield, *The Unicameral Legislature in Nebraska*, 34 MICH. L. REV. 26, 27 (1935) [hereinafter cited as Orfield]; Lancaster, *supra* note 9, at 60; OLSON, *supra* note 4, at 322.

when the nonpartisan unicameral was placed on the 1934 November election ballot with two popular proposals, pari-mutuel betting and repeal of prohibition, the most unique legislative innovation of the twentieth century was finally accepted.¹²

The three prime movers behind the nonpartisan unicameral were United States Senator George W. Norris, John N. Norton and Dr. John P. Senning.¹³ Norton's promotion through the years kept the unicameral ideal alive in Nebraska, the political astuteness of George Norris judged the Nebraska voter ready to accept the proposition in 1934, and Senning's education background provided the political theory to complete the triumvirate.¹⁴ The leadership of Senator Norris was probably decisive, since the people of Nebraska highly respected his national reputation for governmental reform.¹⁵ Within the short span of four weeks Norris addressed large audiences in major centers of the state and contacted by radio almost all of the voters of the state.¹⁶

Senator Norris converted many voters with his theory that a legislature should be elected on a businesslike basis and should function along business lines rather than through political party channels.¹⁷ Other arguments presented by Norris were that the legislators and the welfare of the state should not be handicapped by any partisan matters, competent judges and school officials were elected on nonpartisan ballots, a nonpartisan legislature would

12. Note 10 *supra*. The initiative petition establishing a one-house legislature was rejected in only 73 precincts of the 2,029 precincts tallied. Shumate, *The Nebraska Unicameral Legislature*, 5 W. POL. Q. 504-05 (1952); *Unicameralism*, *supra* note 11, at 265; Senning, *supra* note 9, at 345. And all but 9 of the 93 counties of the state voted in favor of the amendment. A. BRECKINRIDGE, *ONE HOUSE FOR TWO: NEBRASKA'S UNICAMERAL LEGISLATURE* 5 (1957) [hereinafter cited as BRECKENRIDGE].

13. Srb, *The Unicameral Legislature—A Successful Innovation*, 40 NEB. L. REV. 626, n.1 (1961) [hereinafter cited as Srb]. George W. Norris was the United States Senator from Nebraska. John N. Norton of Polk, Neb., served in the Nebraska Bicameral Legislature, the United States Congress and the first unicameral legislature. Dr. John P. Senning was a professor of political science at the U. of Neb. *Id.*

14. R. Marvel, *Decision-Making in the Nebraska Unicameral Legislature for the 1959, 1961, and 1963 Sessions* 54 (doctoral thesis, 1966, on file in U. of Neb.—Lincoln Love Library) [hereinafter cited as Marvel].

15. OLSON, *supra* note 4, at 323; BRECKENRIDGE, *supra* note 12. The importance of George Norris' support is underscored by the fact that he was offered Democratic backing for his senatorial campaign if he would drop the nonpartisan feature. He refused saying that he wanted the entire package or none at all. Alembrete & Fishburne, *The Unicameral Legislature*, 17 U. FLA. L. REV. 355, 359, n.23 (1964).

16. Senning, *supra* note 9, at 345.

17. *Id.* at 348.

avoid party machines and bosses,¹⁸ and the influence of national issues would no longer affect strictly state elections.¹⁹ Additional reasons given during the campaign for adoption of the nonpartisan feature were that it would preserve the legislature as a separate and distinct branch of government by preventing the governor of the majority party from controlling the legislature,²⁰ a nonpartisan election would result in better individuals running and being selected for office, less legislative time would be wasted by political bickering and rivalry between members, each member would assume a position of responsibility rather than that of a cog in a political machine, measures would be advanced or killed on their merits rather than on the basis of political considerations or feelings, and political parties in Nebraska have never been the main vehicle for solving the major state problems.²¹

Organized opposition cut deeply across party lines because the nonpartisan legislature proved unpalatable to the orthodox party adherents. Former legislators feared that their chances of re-election would be jeopardized.²² Governor R. L. Cochran, probably the

18. Norris, *One-House Legislatures*, 17 PHIL. L. J. 356, 360-61 (1938) [hereinafter cited as Norris].

19. Norris, *The One-House Legislature*, 24 NAT'L MUN. REV. 87, 89, 99 (1935) [hereinafter cited as *One-House*]. A radio address delivered Feb. 5, 1935, in the *You and Your Government* series.

George Norris of McCook, Neb., spent his career on the fringe of political parties, and as a result of his independence he did not treat the political parties with any great respect, and the parties did not treat him with much favor either. Rep. Norris fought against Speaker Cannon in 1910, and Sen. Norris joined the recalcitrant Progressive Republicans in 1912, 1916 and 1924. In the bitter election of 1924 the fact that Norris campaigned for the Progressives and was re-elected to the Senate as a Republican illustrates that Nebraska voters have never slavishly followed party lines. The Republicans made a desperate effort in 1930 to defeat Norris by having George W. Norris, a grocery clerk at Broken Bow, file for the Senate. The filing arrived in Lincoln two days late, however, Secretary of State Frank Marsh accepted it since it was postmarked in Broken Bow within sufficient time. Norris' friends, led by Attorney General C.A. Sorensen, immediately brought action, and an opinion by Chief Justice Goss that the filing was invalid kept "Grocer Norris" off the ballot. In 1936 Norris accepted the Independent nomination advocated by *The Lincoln Star*. With the aid of President Roosevelt's support and presence, he defeated the Democratic nominee, Terry Carpenter, and the Republican nominee, Robert G. Simmons. George Norris was not a partisan, and his political experiences and attitudes fixed his inflexible nonpartisan stance regarding the Nebraska Unicameral. OLSON, *supra* note 4, at 245, 293-95, 304-05.

20. Senning, *Constitutional Essentials for a Unicameral Legislature*, 11 U. KAN. CITY L. REV. 10, 13-14 (1942) [hereinafter cited as *Essentials*].

21. Saylor, *supra* note 5, at 37.

22. Senning, *supra* note 9, at 345.

leading opponent of the nonpartisan feature,²³ issued an appeal to tradition and party loyalty.²⁴ Some farm groups and most minority groups opposed the amendment on the grounds that the proposed legislature's membership was too restricted and farmers, blacks and women would not be adequately represented.²⁵ Most of the press, led by the Omaha *World-Herald*, fought the innovation.²⁶ The most frequent criticisms were that nonpartisanship would result in a lack of leadership in the legislature, there would be no responsible group action but rather blocs and cliques of legislators organized to secure specific legislation, no plan of action or legislative program would develop, and there would be lack of coordination and cooperation with the governor.²⁷

Why was the nonpartisan unicameral concept successful in 1934? The significant role played by George Norris was crucial,²⁸ and the beneficial effect of the co-proposals on the ballot, pari-mutuel betting and repeal of prohibition, attracted some affirmative responses;²⁹ however, there were other basic factors which made the time ripe for change.

The economic depression of the 1930's made the people turn to government for relief, but when the government failed to render adequate assistance many people became disposed to alter the existing system.³⁰ Furthermore, 1934

was the year of the first election since the New Deal experimentation was in the air. The 1932 election swept in many members without legislative experience, and the long drawn out session and contentious spirit of its members led to popular disfavor.³¹

23. Saylor, *supra* note 5, at 36.

24. Senning, *supra* note 9, at 345.

25. OLSON, *supra* note 4, at 323; Aylsworth, *Nebraska's Nonpartisan Unicameral Legislature*, 26 NAT'L MUN. REV. 77, 78 (1937) [hereinafter cited as Aylsworth].

26. OLSON, *supra* note 4, at 323. The only papers supporting the amendment were *The Lincoln Star* and the *Hastings Tribune*. *Id.*

27. Saylor, *supra* note 5, at 38.

28. See notes 13, 14, 15, 16, 17, 18, 19 *supra* and accompanying text. "The fact that the unicameral measure had the backing of Sen. Norris was reason enough for adoption in the eyes of many voters." Orfield, *supra* note 11, at 28.

29. BRECKENRIDGE, *supra* note 12, at 5, 44; OLSON, *supra* note 4, at 324; *Unicameralism*, *supra* note 11, at 265; Orfield, *supra* note 11, at 28. Lancaster claims that "closer analysis does not support this theory" of the pari-mutuel betting and prohibition repeal amendments giving any significant aid to the nonpartisan unicameral proposal. Lancaster, *supra* note 9, at 62-63.

30. See generally BRECKENRIDGE, *supra* note 12, at 8, 44; Marvel, *supra* note 14, at 39, 52.

31. Orfield, *supra* note 11, at 28. The 1933 legislature left a bad taste in the mouths of many voters. . . . Possi-

However, the mood of experimentation ushered in by the New Deal still fueled the fire of change.³²

Other forces militating for change were the public disenchantment with the conference committee between the two legislative houses, the desire to force open consideration of legislation, the feeling that the smaller sized legislature and nonpartisanship would heighten responsibility, the hope of lessening the impact of special interests, and the obvious saving in expenditures in a one house rather than a two house legislature.³³

One extremely important element was (and still is) the traditional independence and nonpartisanship of Nebraska's people and their legislators.³⁴ The political environment in Nebraska contained an agrarian populace with a business orientation; a large percentage of elderly voters; many poor, thrifty, conservative, and pragmatic immigrants; an urban (Omaha and Lincoln)—rural schism; and an east-west geographic split. Also present were the historic political factors of an ingrained pioneer spirit and a lack of commitment to any political philosophy.³⁵ As one writer has observed:

Perhaps it is not too far fetched to trace the individualism and the nonpartisanship of early agricultural political revolts to the signs of weakness in the Nebraska political parties by the mid-1930's, and ultimately to the establishment of a nonpartisan state legislature.³⁶

bly because it contained an unusually large number of inexperienced members, it wasted a good deal of time on trivialities. It produced out of its own ranks no vigorous or confident leaders able to take in hand the more than usually vociferous rank and file. The serious illness of Governor Bryan which continued throughout the session deprived it of what might well have been effective and prudent guidance.

Lancaster, *Nebraska Considers a One-House Legislature*, 23 NAT'L MUN. REV. 373, 375 (1934) [hereinafter cited as *Nebraska Considers*].

32. Lancaster, *supra* note 9, at 62.

33. *Id.* at 62-63.

34. See Lancaster, *Nebraska's Experience with a One-House Legislature*, 11 U. KAN. CITY L. REV. 24, 25 (1942). "[E]ven under the bicameral system party votes were rare in Nebraska, where political independence long ago hardened into a tradition." Lancaster, *supra* note 9, at 73. In the 1930's there were a "large number of independent voters in the state." *Nebraska Considers*, *supra* note 31, at 376.

35. Marvel, *The Nonpartisan Nebraska Unicameral*, 1967 MIDWEST LEG. POL. 89, 90-95 [hereinafter cited as *Nonpartisan*].

36. Marvel, *supra* note 14, at 40.

The farmers lack of enthusiasm "about farm organizations is reminiscent of this same general lack of commitment to the political organization." [CAMPBELL, *et al.*, THE AMERICAN VOTER 415 (1960)] Evidence of low agrarian political in-

Thus, the essential ingredients leading to the adoption of Nebraska's Nonpartisan Unicameral were the economic depression which created an air of experimentation, the political environment of the state including the traditional nonpartisanship of the people, and the leadership provided by the popular Senator Norris.

B. THE NEW EXPERIENCE

In 1937 forty-three nonpartisan legislators replaced 100 partisan representatives and thirty-three partisan senators when the new Nebraska Nonpartisan Unicameral was convened. Much to the chagrin of the opponents of the nonpartisan unicameral, the elections presented the voters with a wider array of candidates (partially due to the significant decrease in legislative seats: 133 to forty-three), and the electorate apparently chose a better caliber of senator than had been chosen in the past.³⁷ The new senators were generally better equipped in native ability, educational training and legislative experience than their predecessors.³⁸ The new legislature also was representative of those farm and minority groups that had previously opposed the change.³⁹

The political complexion of the legislature was altered markedly. Twenty-one Republicans and twenty-two Democrats were elected in a strongly Democratic election year and in contrast to the two preceding bicameral partisan bodies where Democrats had outnumbered Republicans at least two to one.⁴⁰

The first nonpartisan unicameral worked within the spirit of nonpartisanship and avoided party caucuses and party conflicts. Party affiliation had little to do with the organization of the new body. The speakership, for example, went to a Republican. The only charges of partisanship arose over the legislature's contacts with the state railway commission and the vote to express the sentiment of the senate towards President Roosevelt's "court packing" plan.⁴¹

Although Governor Cochran charged that there was "no formal responsible leadership" in the unicameral and that "all formal lines

volvement . . . indicates "a partisan fluidity" and lack of general ideological concern for political movements.

Id.

37. Aylsworth, *supra* note 25, at 77-78; Carter, *The Unicameral Legislative System*, 21 FLA. L.J. 112 (1947) [hereinafter cited as Carter]; BRECKENRIDGE, *supra* note 12, at 34; Norris, *supra* note 18, at 362.

38. Aylsworth, *supra* note 25, at 80.

39. *Id.* at 78, 80; Note 25 *supra* and accompanying text.

40. Aylsworth, *supra* note 25, at 79.

41. Lancaster, *supra* note 9, at 66, 72.

of communication between the legislative and executive branches have been removed,"⁴² the governor apparently had no difficulty in securing a hearing. Furthermore, on the few occasions that he carried his cause to the legislature in unequivocal language he was able to command a following.⁴³ Polls taken at the conclusion of the session showed that the large majority of senators supported the nonpartisan legislature, a considerable reversal from their original disfavor.⁴⁴

Through the years the spirit of nonpartisanship has prevailed with many instances of leadership and committee posts being given to members who would have represented the minority party in the legislature.⁴⁵ And, of course, senators have been elected from districts which would have denied them that privilege if the party label had been attached.⁴⁶

Some valid criticisms have been leveled at the nonpartisan unicameral over the years. Inadequate organization, failure of leadership, poor executive-legislative communications, and the dominant role of lobbyists and special interest groups have been offered as reasons for reverting to a partisan legislature. These charges and others will be compiled and analyzed later.

III. CURRENT DEBATE

The 1969 legislature established the Nebraska Constitutional Revision Commission to recommend changes in the Nebraska Constitution.⁴⁷ It is of some consequence that this commission recommended the retention of the nonpartisan unicameral.⁴⁸ The retention of the nonpartisan feature was, however, a close question with the first vote resulting in a tie⁴⁹ and the final vote preserving the status quo by only a seven to five margin.⁵⁰

42. Lincoln Evening Journal, Sept. 14, 1937, at 10, col. 6.

43. Lancaster, *supra* note 9, at 73.

44. *Id.* at 72; Saylor, *supra* note 5, at 1, 36-38.

45. BRECKENRIDGE, *supra* note 12, at 45; OLSON, *supra* note 4, at 325.

46. BRECKENRIDGE, *supra* note 12, at 45. For an article extolling the virtues of the nonpartisan unicameral and answering the arguments of some of the critics, see Dobbins, *Nebraska's One-House Legislature—After Six Years*, 30 NAT'L MUN. REV. 511 (1941) [hereinafter cited as Dobbins].

47. L.B. 244, 80th Neb. Leg. Sess. (1969). For a reproduction of the text of the bill see Comment, *To Require That A Majority of the Supreme Court Determine the Outcome of Any Case Before It*, 50 NEB. L. REV. 622 (1971).

48. REP. OF THE NEB. CONSTITUTIONAL REVISION COMM'N 17 (1970).

49. 1970 MINUTES OF THE NEB. CONSTITUTIONAL REVISION COMM'N 1162-63 [hereinafter cited as MINUTES].

50. *Id.* at 1675-76.

Adam Breckenridge, who had written a book on the Nebraska Nonpartisan Unicameral⁵¹ which concluded that there was "no evidence that much would be gained if the partisan feature were restored to the Nebraska plan,"⁵² switched his position at the commission's hearings and advocated a partisan legislature to assure "greater opportunity for more collaboration between the Governor and the legislators."⁵³ Representatives from both the Democratic and Republican parties spoke in favor of repealing the nonpartisanship provision. The party spokesmen expressed the "feeling in both of the political parties that the members of the Legislature are representing no point of view other than their own"⁵⁴ and that the legislature is not a training ground for future political leaders.⁵⁵ They did concede, however, that a partisan legislature would not cure the vast and insurmountable pile of legislation,⁵⁶ a major concern of the commission members as well as the legislature.

At the Constitutional Revision Committee hearing for LB 1431 during the 1972 legislative session, the two major political parties again supported amending the constitution to provide for a partisan legislature. They stressed the need for better organization, greater continuity of planning and more leadership. They again pointed out that the legislature is a dead-end politically and that the political parties would be strengthened by a partisan unicameral. Senator Stromer suggested that the people be given a chance to vote on the partisanship issue separate from the unicameral issue.⁵⁷ During the recent 1973 session these arguments were again dragged out and laid before the legislature with the partisans nearly obtaining a victory.

Some of the studies conducted on the Nebraska Nonpartisan Unicameral are well worth noting. A poll taken in 1961 indicated that a majority of the present and past senators polled believed that a partisan governor and a nonpartisan legislature got along fairly well. Six governors, however, felt all was not well.⁵⁸

A personal study conducted by Senator Marvel concluded that decision-making in the unicameral was a complex operation involving a struggle between the conservative and liberal elements of

51. BRECKENRIDGE, *supra* note 12.

52. *Id.* at 47.

53. MINUTES, *supra* note 49, at 179.

54. *Id.* at 407-08. See notes 91, 92 *infra* and accompanying text.

55. *Id.* at 408. See notes 108, 109, 110 *infra* and accompanying text.

56. *Id.*

57. *Hearings on L.B. 1431 Before the Constitutional Revision Comm., 82d Neb. Leg., 2d Sess. (1972)* [hereinafter cited as *Hearings*].

58. NEBRASKA'S UNICAMERAL LEGISLATURE, DEPTH REPORT No. 1 at 16 (School of Journalism, U. of Neb.-Lincoln, 1961).

the state.⁵⁹ In spite of this confrontation Marvel found that moderation highlighted the decision-making process.⁶⁰ Although one of Marvel's sub-hypotheses was that the legislature's voting pattern would follow strong Republican lines,⁶¹ Marvel's analysis did not indicate any dominant Republican influence⁶² or ultraconservative, or even conservative, voting trends.⁶³ Few bills were endorsed by the parties, and on most measures neither party took a position. The parties were actually of little assistance to the legislators, especially for research purposes.⁶⁴

A study by Bernard Kolasa discovered that the Nebraska Legislature was all but devoid of any party influence,⁶⁵ and that the decision-making process was one of moderation or consensus voting.⁶⁶ However, the price paid for such moderation and consensus decision-making was time. The political, demographic, economic, and social environment was found to be disadvantageous for the organization and operation of an effective and viable party structure.⁶⁷ Party influence was such that some of the political proc-

59. Marvel, *supra* note 14, at 227.

60. *Nonpartisan*, *supra* note 35, at 109.

61. Marvel, *supra* note 14, at 170.

62. *Id.* at 221.

63. *Id.* at 225.

64. *Nonpartisan*, *supra* note 35, at 107.

65. B. Kolasa, *The Nebraska Political System: A Study in Apartisan Politics* 479 (doctoral thesis, 1969, on file in U. of Neb.-Lincoln Love Library) [hereinafter cited as Kolasa Thesis].

Political parties do not function effectively within the system—they do not serve as an effective channel of communication, they do not command much authority within the decision-making process, and consequently they do not engender much respect from the individuals within the system. The institutionalized leadership devices which a sound and effective party system provides are absent and these have not been replaced to any great degree by any alternative means.

Id. at 476.

66. *Id.* at 484.

Quick decisions are rare; instead a long gestation period is necessary while the various influences within the decision-making process interact—the legislators, interest groups, constituent influence, the executive, the administrators. An accommodation of influences is necessary before action can be taken, and the interaction toward reaching this needed accommodation of interests can be a long and slow process. It is only when there is better than majority support will action be taken. . . . The process might be termed decision-making through consensus of the participants, something more than majority government, but yet less than unanimous agreement.

Id. at 483-84.

67. *Id.* at 68-69.

[T]he data do not provide a picture of an environment where political parties would be expected to be active and effective.

esses, including the recruitment process on the executive level, were in effect nonpartisan, and many were conducted within the framework of limited partisanship.⁶⁸ As one result, Kolasa reasoned that lobbyists must operate within an extremely favorable environment for they serve as the most important access vehicle between constituent and legislator.⁶⁹

The 1971 evaluation of the Citizens Conference on State Legislatures recommended that party identification of legislative candidates be placed on the Nebraska ballot. This study believed that the nonpartisan concept failed to focus public attention on major questions of resource allocation and neglected to insure the existence of an opposition.⁷⁰

These conclusions, theories and beliefs will be compiled and analyzed in the following section.

IV. COMPILATION & ANALYSIS

A. POLITICAL BASES

A political party is often defined as an association of men and women with a "duality of party aims"—(1) to achieve success at the polls⁷¹ and (2) once in power, to promote the policies of the party.⁷² A satisfactorily operated two party system only has cleavage between the parties on those issues that divide the parties. If the party structure is strong, the leaders will indicate to their fol-

The lack of significant divisive influences would point in the direction of a structure where the party role of forging alliances and coalitions among diverse and competing factions would be minimal and consequently the necessity for party participation and organization as a unifying force would be reduced.

Id. at 68.

68. *Id.* at 477, 482.

69. Kolasa, *Lobbying in the Nonpartisan Environment: The Case of Nebraska*, 24 W. POL. Q. 65, 77 (1971) [hereinafter cited as Kolasa].

The absence of party diminishes the competition vying for legislative attention and enhances the position of the lobbyist. The general reluctance of most Nebraska executives to play a positive role in legislative affairs strengthens the dominant position interest groups occupy. There is every reason to believe interest groups are eminently successful in goal achievement given these favorable factors.

Id. at 77-78.

70. THE CITIZENS CONFERENCE ON STATE LEGISLATURES, *STATE LEGISLATURES: AN EVALUATION OF THEIR EFFECTIVENESS* 234 (1971) [hereinafter cited as CONFERENCE EVALUATION].

71. Keefe, *Party Government and Lawmaking in the Illinois General Assembly*, 47 NW. U.L. REV. 55, 56 (1952) [hereinafter cited as Keefe].

72. E. BURKE, *THE WORKS OF EDMUND BURKE* 375 (1837).

lowers how they should vote with little deviation permitted.⁷³ Compromise and reciprocity are the bonding agents of the system. However, except in the most disciplined parties, the reciprocity is more often "between fluid coalitions of members that relate to other groupings on the outside of the legislative body,"⁷⁴ which is not too divergent from the nonpartisan arena.

Many state legislatures have no real party competition and may be classified as either nonpartisan by design, as in Nebraska and Minnesota, or nonpartisan because of the dominance of one party.⁷⁵ When party or factional alignments are not present the legislator has little to refer to for voting standards, and his pattern of voting becomes compartmentalized. Thus without party guidance the legislator may, consciously or unconsciously, respond to different pressures when presented with different voting situations.⁷⁶

Political research has also postulated that the more competitive the party system, the weaker are lobbyists and pressure groups, and conversely, the less competitive the party system, the more likely are the special interest groups to exert influence in the decision-making process.⁷⁷ Also postulated is that the problems arising from the inadequacies of the nonpartisan system become more acute as the increasing influence of the modern legislature affects greater numbers of people over wider areas of their lives.⁷⁸

In Nebraska, because of the non-political ballot, the direct primary becomes a restricted elimination contest. The two candidates receiving the largest vote in the primary are entered on the November general election ballot. The common outcome is that the

73. Hagan, *supra* note 2, at 316.

74. *Id.* at 324.

Settlements, if any, may be made in caucuses, . . . in the regular weekly sessions between legislative leaders and the governor during sessions of the legislature, and in other *ad hoc* meetings. All of the participants who should be consulted on a particular matter may not attend any particular meeting, but the matter will be "cleared" with appropriate lobbyists or other representatives. . . . A floor fight may occur, but usually the outcome is known in advance.

Id. at 325.

75. Patterson, *Dimensions of Voting Behavior in a One-Party State Legislature*, in *AMERICAN LEGISLATIVE BEHAVIORS: A READER* 365 (S. Patterson ed. 1968). Reprinted from 26 *PUB. OP. Q.* 185 (1962).

76. *Id.* at 377.

77. Kolasa, *supra* note 69, at 65. See also Zeigler, *Interest Groups in the States*, in *POLITICS IN THE AMERICAN STATES* 141 (H. Jacob & K. Vines eds. 1965); H. ZEIGLER & M. BAER, *LOBBYING: INTERACTION AND INFLUENCE IN AMERICAN STATE LEGISLATURES* 199 (1969); V. KEY, *SOUTHERN POLITICS IN STATE AND NATION* (1949).

78. MITAU, *supra* note 2, at 81.

candidate with the highest tally in the primary wins at the general election, and the victor is usually the incumbent.⁷⁹ The political registration figures in 1968 showed a fifty-two to forty-six percent Republican-Democratic division; however, since the first two unicameral sessions, the Democrats have rarely held over one-third of the legislative seats. This may indicate that the nonpartisan feature gives more influence to the Republicans than the actual political division in the state might warrant.⁸⁰

These political bases necessarily form the theories for and against a nonpartisan unicameral which now will be examined.

B. THEORIES IN CONFLICT

All theories of government require a balancing between the advantages and the disadvantages of any particular concept. The nonpartisan legislature is no exception. Although the Nebraska Nonpartisan Unicameral is now supported by its former foe, tradition,⁸¹ it is only fitting that the balancing should continue and that the conflicting theories should be reassessed. The remainder of this article will be devoted to an analysis of (1) the partisanship arguments, (2) the nonpartisanship arguments, and (3) the conflicting arguments of both.

1. Partisanship Arguments

a. Leadership and Organization

Advocates of the partisan legislature continually deride the nonpartisan legislature for its "crisis in leadership," that is, its failure to provide the necessary leadership and organization to achieve an efficient legislature.⁸²

79. BRECKENRIDGE, *supra* note 12, at 35.

80. Kolasa Thesis, *supra* note 65, at 489.

[A] good Democratic election year is not reflected in the legislative contests. There is also much to support the contention that nonpartisan elections favor candidates from a socioeconomic background that traditionally identifies with the Republican party.

Id.

81. BRECKENRIDGE, *supra* note 12, at 5; OLSON, *supra* note 4, at 327.

82. *Hearings*, *supra* note 57; Auton, *The Legislative Politics, Policy: 1959*, 14 RUT. L. REV. 269, 275 (1960) [hereinafter cited as Auton]; Kolasa Thesis, *supra* note 65, at 472. See Keefe, *supra* note 71, at 70. In reply, nonpartisan advocates make the constant comparison to the success of other nonpartisan bodies as city councils and boards of education; however, this comparison is inappropriate because those bodies usually have a leader designated, are not overseen by a partisan from another branch of government, and have a considerably different, if not easier, governmental task. Cf. Saylor, *supra* note 5, at 39.

The nature of leadership is largely tied to the personnel of the body and thus fluctuates from session to session and issue to issue. A general, over-all legislative program is frequently lacking and thus the legislative process is largely one of interest group interaction, supplemented and occasionally superseded by executive direction.⁸³

The result is that time is often wasted,⁸⁴ and voting becomes compartmentalized.⁸⁵ Moreover, without political party control personal animosities may create legislative deadlocks.⁸⁶

Party control has never been strong in Nebraska, however,⁸⁷ and there is significant evidence that party influence in most partisan state legislatures is weaker than commonly supposed.⁸⁸ Party shifts and party bickering may waste more time and create more confusion than in a nonpartisan environment. Furthermore, because the majority party takes full command of the legislature they usually give special treatment to their own measures and stall the bills of the opposition,⁸⁹ and, of course, the best office facilities and clerical assistance often pass to the majority.

One consequence of partisanship is that the importance of the party leadership depends to some extent upon whether the governor is of the majority party or the minority party. With the weight of the publicity and patronage of the governor's office the party leadership and influence increases significantly. If the governor is of the minority party, he is in a weakened position and must normally avoid partisanship.⁹⁰

The leadership and organization of the unicameral may be improved by partisanship, but there would be certain distinct disadvantages.

83. Kolasa Thesis, *supra* note 65, at 384.

Without party guidance, the freshman senator must turn to the more experienced legislator for aid in making important decisions, such as election of the legislative leaders, making choices for committee assignments, and co-sponsoring legislation from the beginning of the session.

Nonpartisan, *supra* note 35, at 108.

84. See notes 65, 66 *supra* and accompanying text.

85. See note 76 *supra* and accompanying text.

86. Saylor, *supra* note 5, at 40.

87. See notes 35, 36 *supra* and accompanying text.

88. B. ZELLER, AMERICAN STATE LEGISLATURES: REPORT OF THE COMMITTEE ON AMERICAN LEGISLATURES, AMERICAN POLITICAL SCIENCE ASS'N 189 (1954) [hereinafter cited as ZELLER].

89. Keefe, *supra* note 71, at 69.

90. Auton, *supra* note 82, at 275; Jewell, *Comparative Research in State Legislative Politics*, in AMERICAN LEGISLATIVE BEHAVIOR 396, 401 (S. Patterson ed. 1968). See note 145 *infra* and accompanying text.

b. Narrowing the Issues

Opponents of nonpartisanship claim that a partisan unicameral would narrow and define the issues with more precision than the present forty-nine individuals making up the legislature. The partisan desire is to have at least two cogent issues instead of ten to forty-nine vague ones.⁹¹ This contention fails to realize that a vast amount of the legislature's business involves little or no controversy and the parties are, or should not be, interested in it.⁹² Also, the proponents of nonpartisanship believe that each senator should have his own view and be free to express his constituents' feelings, not the party's.

c. Fixing Responsibility

The partisan supporters charge that there is no collective responsibility in the nonpartisan legislature.⁹³ Nonpartisanship tends to frustrate protest voting for it encourages the avoidance of issues of policy during the campaign.⁹⁴ It "results in campaigns largely devoid of issues and the election of 49 individuals uncommitted to any program or any philosophy."⁹⁵ The claim is that the voters are usually uninformed and to cast their ballot intelligently they need a party label for identification.⁹⁶ There is probably a clearer focus of responsibility under a partisan set-up, a better accounting to the electorate, and though deadlock is possible, it is a short-run phenomenon and one that is generally resolved through mutual concessions or at the next election.⁹⁷

Norris' answer to this charge was that if a man rode into office on a party label, the voter would know little or nothing about where the senator stood on matters of state policy, because parties usually divide primarily along national lines.⁹⁸ It is also argued

91. See *Hearings*, *supra* note 57; *MINUTES*, *supra* note 49, at 408.

92. See Keefe, *supra* note 71, at 70.

93. Adrian, *Some General Characteristics of Nonpartisan Elections*, 46 AM. POL. SCI. REV. 766, 775 (1952) [hereinafter cited as Adrian]. See Dobbins, *supra* note 46, at 511.

94. Adrian, *supra* note 93, at 772-73. There have been violent changes in partisan bodies as during the depressions but no such fluctuations in nonpartisan bodies. *Id.* at 774.

95. Kolasa Thesis, *supra* note 65, at 477. "Though it may appear they are free agents, by the nature of the situation, they respond to the more narrow interests patterning individual motivation—prejudice, specialized interest groups, or self-interest." *Id.*

96. Testimony by Dr. Robert Sittig, *Hearings on L.B. 299 Before the Government and Military Affairs Comm.*, 77th Neb. Leg. Sess., at 27 (1967).

97. Kolasa Thesis, *supra* note 65, at 488. See CONFERENCE EVALUATION, *supra* note 70 and accompanying text.

98. *One-House*, *supra* note 19, at 99.

by nonpartisan adherents that when state party platforms are drawn they rarely delineate any precise distinctions between the parties,⁹⁹ and, besides, the party platforms are seldom followed.¹⁰⁰

d. Preserve an Organized Opposition

The Citizens Conference on State Legislatures believed that the Nebraska nonpartisan feature was unable to provide an organized opposition to insure the complete presentation of all the aspects of an issue and to represent all interest involved.¹⁰¹ This claim, however, conflicts, at least in part, with other charges that the nonpartisan legislature presents too many views¹⁰² and that the special interest groups are more than adequately represented.¹⁰³ It may be true that some interests are not organized. It is also true that the parties may not be concerned with the issue, resulting in a nonpartisan situation anyway, or the parties may stifle any opposition other than the one or two views that they represent.

e. Strengthen the Parties

A frequently expressed reason for establishing a partisan legislature is to strengthen the political parties.¹⁰⁴ Of course, those who are not dedicated to the party system find this a hollow argument. Partisans argue that with a nonpartisan legislature there can be no fruitful participation of parties at the state level, the only public political arenas are the governor's office and the national offices, and the two-party system is the victim.¹⁰⁵ A study by C. R. Adrian

99. Dobbins, *supra* note 46, at 511-12.

100. For example, Gov. J.J. Exon as the titular head of the Democratic party vetoed two 1972 legislative measures, state aid to schools and election of Omaha school board members by district, which were both planks in the Democratic party platform and advocated by the party in the campaign. See *Lincoln Evening Journal*, March 28, 1972, at 5, col. 2; *Lincoln Sunday Journal & Star*, April 9, 1972, at 4, § B, col. 1.

101. See CONFERENCE EVALUATION, *supra* note 70 and accompanying text.

102. See note 91 *supra* and accompanying text.

103. See notes 149, 150, 151, 152, 153 *infra* and accompanying text.

104. See *Hearings*, *supra* note 57; Adrian, *supra* note 93, at 767; MITAU, *supra* note 2, at 95.

105. BRECKENRIDGE, *supra* note 12, at 44-45.

By some, who think Nebraska has succumbed to becoming a one-party state (Republican), the charge or blame is put on the nonpartisan feature of the legislature. . . . To some Republican stalwarts on the other hand there is concern not so much about the two-party system as there is for a closer liaison between the governor and the party in the legislature.

Id. There is some evidence that the Democratic party would be the

found that the results of a nonpartisan election were that political leaders were segregated strictly to either partisan or nonpartisan areas; channels for recruitment of candidates for partisan offices were restricted as well as nonpartisan offices; funds for financing nonpartisan and partisan election campaigns were nearly completely segregated; and facilities for fund-raising by candidates for nonpartisan offices were restricted by nonpartisanship.¹⁰⁶ On the other hand, the nonpartisan legislature has not hindered the parties in their traditionally accepted privileges and functions such as platform writing and espousal of a program during campaigns for other state and local offices or for national offices.¹⁰⁷

f. Legislature Dead-End Politically

The political parties claim that the legislature does not train future leaders¹⁰⁸ and as a result is a dead-end politically.¹⁰⁹ This may be a valid charge since no national office holders have arisen from the legislative ranks and only Vic Anderson and Robert Crosby have achieved the governor's office from the legislature.¹¹⁰ Again, for those persons who are not strong party members this is a weak argument. At any rate, legislators would undoubtedly make experienced and competent political office holders in the partisan arena if the parties would tap the candidate resources in the legislature.

g. Separate Vote for Nonpartisanship

George Norris was adamant that the nonpartisan concept be inextricably joined with the unicameral concept and be voted upon as one innovation.¹¹¹ With this he was successful. If the 1924 vote on nonpartisanship as a distinct issue was any example,¹¹² the electorate in 1934 may have struck down the nonpartisan feature if separated from the unicameral concept. The proponents of a partisan legislature, and even some of the opponents, believe that the people should have an opportunity to voice their support or non-support for a nonpartisan legislature.¹¹³ Times change, people change and the political environment changes; maybe an expression of public approval or disapproval is warranted.

big beneficiary of a partisan unicameral. See note 80 *supra* and accompanying text.

106. Adrian, *supra* note 93, at 769-72.

107. BRECKENRIDGE, *supra* note 12, at 45-46.

108. MINUTES, *supra* note 49, at 408.

109. Hearings, *supra* note 57.

110. MINUTES, *supra* note 49, at 408.

111. See notes 9, 15 *supra* and accompanying text.

112. See note 8 *supra* and accompanying text.

113. Hearings, *supra* note 57.

2. *Nonpartisanship Arguments*

a. *Little Distinction Between the Parties*

Nonpartisans argue that there is only a small difference, if any, between the two political parties. This phenomenon has been true in the past¹¹⁴ as well as the present.¹¹⁵ As each party attempts to approach the center of the political spectrum where the majority of votes are believed to be, they tend to blend together, the result being there may be more political variance within the separate factions of a party than between the two parties themselves. In any event, if the voter is unable to discern the fine distinction between the parties, he ends up in the same predicament that he may be in under the nonpartisan system, voting for the man. The only other choice would be to vote for the party, for whatever the voter might think it represents, out of party allegiance.

The parties argue, of course, that they do offer viable alternatives that the voters can recognize. They further declare that the two-party system is the foundation of our democratic system, and its organization is a necessity for efficient, orderly government.

b. *Avoid National Controversies*

One of the desires of the proponents of nonpartisanship has been to keep the state legislature grounded upon state issues rather than embroiled in national controversies.¹¹⁶ State concerns such as law enforcement, conservation, education, elections, local government, daylight saving time, liquor control, water safety, highway construction, teacher retirement plans, trucking permits, and many others are primarily indigenous to the state. The political divisions are between geographic or economic interests, not any national party interest.¹¹⁷ Thus the reason that partisanship is weaker in the state legislatures may be because the two major national parties are divided on national issues which do not figure greatly in the politics of the states.¹¹⁸

The partisan answer is that the parties can and do represent state concerns, but if the national issues seem to be infused in state affairs, it is probably because the federal government has become so all-encompassing that its actions permeate the state and local

114. Dobbins, *supra* note 46, at 512; BRECKENRIDGE, *supra* note 12, at 46; OLSON, *supra* note 4, at 326.

115. *Hearings*, *supra* note 57.

116. *One-House*, *supra* note 19, at 89; Srb, *supra* note 13, at 632; *Hearings*, *supra* note 57.

117. MITAU, *supra* note 2, at 95.

118. ZELLER, *supra* note 88, at 189, 192.

levels to a much greater extent today. Thus national political divisions are more relevant now than in the past.

c. Small Population

Nebraska has a small population, approximately one and one-half million people, and although it is geographically large it resembles the constituency size of many nonpartisan metropolitan city governments rather than most populace state governments. The Citizens Conference on State Legislatures admits that the population size and density of states may influence the character and scale of legislative capabilities.¹¹⁹ Other political studies argue that urbanization is positively associated with competitive party voting.¹²⁰ As a result Nebraska may be more suited to a nonpartisan system than a partisan system. The partisans may call this nonsense since the state issues are not that dependent upon population, and even if they were, Nebraska is becoming more urban with every passing year. Thus Nebraska's problems will soon be, if they are not already, primarily urban political problems.

d. Forty-Nine Senators in One House

George Norris claimed that every one house legislature should be elected on a nonpartisan basis.¹²¹ A unicameral could probably be partisan or nonpartisan, but it would be difficult, if not impossible, for a bicameral legislature to be nonpartisan because of the greater need for coordination, unification and some common denominator to achieve efficiency.¹²² The bicameral Minnesota Legislature is a good example of the failure of nonpartisanship in a two-house environment.¹²³ Thus a nonpartisan legislature is presumably only capable of success in a unicameral.

119. CONFERENCE EVALUATION, *supra* note 70, at 59. *But compare* Waldron, *The Legislative Assembly in a Modern Montana Constitution*, 33 MONT. L. REV. 14, 24-26 (1972).

120. Cutright, *Urbanization and Competitive Party Politics*, 25 J. POL. 552-64 (1963).

In a sparsely populated environment, the role of parties as candidate recruitment organs may be diminished as informal, personal interrelationships play a larger and more effective role in identification and decision-making by the voter. This may also contribute toward diminishing the need for party financial support since the candidate is already known to a great percentage of the potential electorate through normal day-to-day contacts.

Kolasa Thesis, *supra* note 65, at 68.

121. *One-House*, *supra* note 19, at 89.

122. *See* note 5 *supra* and accompanying text.

123. *See* notes 2, 7 *supra* and accompanying text.

It has been stated that "a legislature should be large enough to reflect the major interests of the state and small enough to be truly deliberative."¹²⁴ In some states there exists a strong belief in a large, unwieldy legislature to keep the volume of legislation to a minimum and to protect against pressure group activity. However, the "larger assemblies have not demonstrated these virtues, for because of their size they are likely either to be controlled by a few leaders or to be stampeded into unwise action."¹²⁵ The Nebraska Legislature with only forty-nine senators in one house is in an advantageous position. The conclusion of the Citizens Conference on State Legislatures was that because of the unicameral feature and because of the small number of legislators the Nebraska Legislature is the least complex and one of the more comprehensible systems in the nation.¹²⁶ Thus one of the most crucial ingredients for the success of a nonpartisan unicameral may well be the achievement of a small, manageable number of legislators.

3. *Conflicting Arguments*

a. *Individualism v. Party Control*

Adherents of nonpartisanship advocate legislative individuality and independence. The desire is to divorce lawmaking from party politics and to have measures considered upon their merits rather than upon the possibility of their political consequences.¹²⁷ The result is to place more responsibility upon the individual senator and less reliance upon party "bosses" and "machines" to make legislative decisions.¹²⁸ Every legislator may offer his own bills and secure a public hearing instead of relying upon the approval of the party and their control over legislation to get a measure considered.¹²⁹

Legislative friendships in the nonpartisan legislature become extremely important politically for "vote trading" to gain the necessary majority support to enact legislation.¹³⁰ Senator Marvel observed that the decisions of Nebraska's senators are individually or-

124. *Essentials*, *supra* note 20, at 11.

125. ZELLER, *supra* note 88, at 63.

126. CONFERENCE EVALUATION, *supra* note 70, at 234. The small size does require more time for committee work, public hearings and other legislative activities for each legislator; however, each senator becomes more familiar with the particular problems. See Carter, *supra* note 37, at 112.

127. See Senning, *supra* note 9, at 349; MITAU, *supra* note 2, at 96.

128. See Srb, *supra* note 13, at 632; MITAU, *supra* note 2, at 95.

129. See note 74 *supra*.

130. *Nonpartisan*, *supra* note 35, at 108.

iented—not strictly urban or rural, Democratic or Republican, conservative or liberal, business or labor as such. The stimuli comes from intimate, minute details, not generalities.¹³¹ The nonpartisan question is, “Do not the legislators owe their loyalty to their constituents, and is it not more desirable that they be responsible to the citizens of their home districts than to governors or political leaders?”

The partisan supporters declare that party control allows for negotiations and concerted effort, and in the absence of a party structure there is no vehicle to impose a necessary, yet unpopular, decision upon the participants.¹³² “The unifying and moderating effect of the political party structure is one way in which the larger interests, the general welfare if one prefers, can rise above the competing individual narrow interests.”¹³³

The partisans deny the total impact of individualism because of the unifying role played by certain individuals in the nonpartisan environment. The nonpartisan legislators who are experts in particular legislative areas become so prominent as to command a following on their own credentials, thus mitigating the individualistic spirit espoused by the nonpartisans. Professor Breckenridge has described the conflict in these terms:

This suggestion of the rankest individualism is not borne out in practice, however, for there are the usual attachments and loyalties, the usual influence of seniority, of geographical distribution, of positions on committees. Leadership arises also from purely personal abilities of members, although the leadership may shift during a session many times on separate questions. The changing alignments may develop on such matters as changing the tax base, or holding the line on the budget, or a division of state-collected locally-shared revenues, or a division on such questions as water use, or control of or possible sale of school lands. At other times the alignments will shape along liberal-conservative philosophies, particularly when governmental reorganization is being considered on the controversial subjects of rural representation and redistricting. . . . [T]hese features are not unique: it is rather that they provide a different emphasis upon leadership and the prospects for developing majority support for any particular measure before the legislature.¹³⁴

b. Party Interest in Major Issues Only

Proponents of a nonpartisan legislature readily point out that even in the most partisan legislature there is often a lack of party

131. Marvel, *supra* note 14, at 13.

132. See Kolasa Thesis, *supra* note 65, at 483-84; Keefe, *supra* note 71, at 70-71.

133. Kolasa Thesis, *supra* note 65, at 477.

134. BRECKENRIDGE, *supra* note 12, at 46-47.

cohesion. The parties generally concentrate their attention only on major issues.¹³⁵ When 1400 to 1500 bills are in the hopper the parties have little interest in the vast majority of the legislation, particularly those state issues which involve little or no controversy, such as parks, county fairs, soil conservation, fish and game fees, care of the insane, motor vehicle and traffic regulations, and state institutions.¹³⁶ Thus the need, if any, for party organization is minimal.

The parties on the other hand may agree that they are not concerned with all the distinct issues, but they do provide the framework to assure efficient consideration of these measures. The parties provide the organization to quickly dispense with noncontroversial bills so that more important questions are reserved sufficient time for deliberation.

c. Separation of Powers

The political reality of having a partisan governor and a nonpartisan legislature has created an unusual and curious state of affairs. Some governors have used the nonpartisan feature to their advantage; others have used nonpartisanship as an excuse to remain isolated from the legislative arena.¹³⁷ Most governors have not been overly fond of the nonpartisan aspect of the unicameral,¹³⁸ one reason being that the partisan governor has to bear the whole responsibility of getting the party platform passed through a nonpartisan legislature.¹³⁹

The legislators on the other hand have been rather pleased with the legislative structure.¹⁴⁰ It is interesting to note that Senator Marvel discovered in his research concerning the 1959, 1961 and 1963 legislatures that the composite legislative decisions had "a definite anti-gubernatorial relationship" resulting in a decision-making stand-off between the legislature and the governor.¹⁴¹

The proponents of a partisan legislature see the obvious solution to this confrontation as the change to a partisan unicameral. The beneficial consequences would include more collaboration between the governor and the legislators,¹⁴² executive-legislative

135. See Keefe, *supra* note 71, at 68, 70; Auton, *supra* note 82, at 274.

136. Keefe, *supra* note 71, at 70.

137. *Nonpartisan*, *supra* note 35, at 107.

138. See note 58 *supra* and accompanying text.

139. ZELLER, *supra* note 88, at 212. But see note 100 *supra* and accompanying text.

140. See note 58 *supra* and accompanying text.

141. Marvel, *supra* note 14, at 221, 225.

142. See MINUTES, *supra* note 49, at 179. See also note 53 *supra* and accompanying text.

teamwork for reform platforms and proposals,¹⁴³ more coordination on state appropriations,¹⁴⁴ and increased governmental efficiency.

However, assuming that a partisan unicameral would result in a Republican majority, although a Republican governor would have a definite advantage, a Democratic governor might be better off with a nonpartisan legislature.¹⁴⁵ Another consideration to be reckoned with under a partisan scheme is that the legislators are elected for four year terms with one-half of the unicameral up for election every two years. Thus one party may dominate in a gubernatorial election year but fail to control the legislature, or a governor may lose his legislative majority in a non-gubernatorial election year. Either event may result in political antipathy between the branches.

Nonpartisan adherents fear that the gubernatorial domination of the legislature would jeopardize the traditional separation of powers and the distinct autonomy the legislature has as a check and balance upon the executive branch.¹⁴⁶ The legislature already has sufficient checks upon its power: public opinion, the governor's veto, judicial review, and the initiative and referendum. It does not need the additional influence of a governor with power over a legislative party to diminish legislative power.¹⁴⁷

The nonpartisans claim that the governor is not now at any great disadvantage in commanding a following.¹⁴⁸ And they conclude philosophically that it has been the trademark of representative government in the United States that the political process moves safely and cautiously rather than with the utmost efficiency and haste.

d. Lobbying

One argument for the adoption of a nonpartisan unicameral was that the influence of lobbyists and pressure groups would be dimin-

143. See MITAU, *supra* note 2, at 97.

144. Until the 1973 legislative session, if the legislature was able to override the governor's budget recommendations by a 2/3, formerly 3/5 vote, the governor could not veto the increase. This caused considerable friction. However, the constitution has now been amended to permit a gubernatorial veto of a budgetary increase. NEB. CONST. art. IV, § 7 (1920), as amended in 1964 and 1972.

145. Kolasa Thesis, *supra* note 65, at 488. See note 90 *supra* and accompanying text.

146. See *Essentials*, *supra* note 20, at 13-14; MITAU, *supra* note 2, at 95-96.

147. See Rodgers, *One House for 20 Years*, 46 NAT'L MUN. REV. 338, 347 (1957).

148. See generally note 43 *supra* and accompanying text.

ished.¹⁴⁹ This hope has not been realized. Nebraska is acknowledged to possess a strong pressure system made up of a few dominant interest groups.¹⁵⁰ The lobbyists direct their attention to the key people in the unicameral upon any particular issue, and they tend to be eminently successful.¹⁵¹ The Nebraska experience substantiates the inverse strength relationship of political parties and interest groups. In other words, Nebraska resembles one-party state legislatures which have little party competition and considerable interest group activity.¹⁵²

Lobbyists in the nonpartisan unicameral are themselves highly partisan with the major percentage of them being Republicans. Unlike other state legislatures, many Nebraska lobbyists are lawyers, and almost unique among legislatures is the interchange of roles—lobbyist to legislator, legislator to lobbyist—that occurs in the Nebraska Legislature.¹⁵³

The nonpartisan stalwarts would probably agree that the role of interest groups has not been lessened by nonpartisanship, however, they can point out that lobbyists do provide a valuable service in research and information gathering and in expressing the sentiment of the legislators' constituents. Most supporters of nonpartisanship would rather suffer the inadequacies of the strong interest group system, which the senators can ignore or control when necessary, than be subject to the inadequacies and control of a strong party system.

149. J. SENNING, *THE ONE-HOUSE LEGISLATURE* 87-88 (1937).

150. See *POLITICS IN THE AMERICAN STATES* (H. Jacob & K. Vines eds. 1965).

In Nebraska the absence of formal party lines in the legislature has not diminished these functionaries. They abound in numbers and are as active as the occasion seems to demand. Sometimes they compete with each other for favor, whatever the degree, and the legislative chamber becomes a place for compromise among them, a place for group decision.

BRECKENRIDGE, *supra* note 12, at 38.

However, the membership of these interest groups and their lobbyists are products of the same environment and must operate within the same basic framework of a formal structure and an informal process as the legislators being pressured.

Marvel, *supra* note 14, at 231.

151. See note 69 *supra* and accompanying text.

[T]he dominance of interest groups is striking. Their role in the legislative process is substantial, and lacking political parties, they fulfill a number of roles from research organs to recruitment of legislators.

Kolasa Thesis, *supra* note 65, at 384.

152. See note 77 *supra* and accompanying text. See also notes 74, 75, 76 *supra* and accompanying text.

153. Kolasa Thesis, *supra* note 69, at 68-69.

e. The Legislator

The nonpartisans argue that more capable candidates are attracted to a nonpartisan election than to a partisan election.¹⁵⁴ Data from the first unicameral indicated that this claim was valid.¹⁵⁵

The channels for recruitment of nonpartisan candidates are normally swelled by those individuals who would not run on a partisan ballot because they have no party identification, because they belong to the minority party in the district,¹⁵⁶ or because they would not attempt or be able to attain party endorsement. Recruitment for nonpartisan elections may be hindered, however, because some persons are not financially able to campaign on their own, and if they had party endorsement and funds, they would enter the race.¹⁵⁷ Moreover, the search for competent candidates in the partisan elections is restricted by the nonpartisan environment.¹⁵⁸ The only conclusion that can be drawn is that nonpartisanship does attract capable and experienced candidates, but the cost may be to exclude some other able persons from the process. This conflict may very well be a draw.

V. CONCLUSION

The endeavor to balance the advantages and disadvantages of a nonpartisan unicameral is wrought with inconsistencies; a conclusion as to the justification and worth of the nonpartisan feature is elusive. However, nonpartisanship is probably only possible in a unicameral with a small membership such as Nebraska's. Thus it either succeeds here, or nowhere.

The most striking observation to surface is the nonpartisan political environment that pervades the Nebraska system. This alone may justify the nonpartisan legislature. Due to the homogeneity of the society, the minimal urbanization, the small population and personalized political process, and the traditional individualism of the people, nonpartisanship would probably continue to be a feature of the Nebraska Legislature even if the legislators were chosen

154. See *Srb*, *supra* note 13, at 632.

155. See notes 37, 38 *supra* and accompanying text; Saylor, *supra* note 5, at 41. A study by C.R. Adrian acknowledges that the nonpartisan election produces a more experienced legislator—a concomitant factor, however, is that the experienced legislator is more conservative as a rule. Adrian, *supra* note 93, at 774.

156. See note 46 *supra* and accompanying text.

157. Adrian, *supra* note 93, at 769-72.

158. *Id.* See notes 68, 108, 109, 110 *supra* and accompanying text.

on a partisan ballot.¹⁵⁹ Therefore, the need for a partisan legislature is necessarily linked to the political environment, to any alterations of the legislative structure and to the future progress of the state. For now, however, the Nebraska *Nonpartisan* Unicameral satisfactorily effects adjustments among the various special worlds and purposes which are currently pressing for realization.¹⁶⁰

159. See Kolasa Thesis, *supra* note 65, at 499-500.

160. See note 1 *supra* and accompanying text.